IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11958 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHAUHAN ARJUNSINH BECHARSINH

Versus

MAMLATDAR

Appearance:

MR JV JAPEE for Petitioner Nos. 1-16

MR PR ABHICHANDANI, AGP for Respondent Nos. 1-5

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 24/07/2002

ORAL JUDGEMENT

#. Rule. Mr.P.R.Abhichandani, learned AGP waives service of notice of rule for the respondent - State of Gujarat.

#. At the joint request of learned advocates, this

matter is finally heard and disposed of by this order.

#. This petition is jointly filed by the present sixteen petitioners, whose lands were permanently submerged in the Dharoi Dam Project. The petitioners were allotted lands in view of the order at Annexure-A dated 04/03/1997 for a period of five years on the terms and conditions mentioned in it. One of the condition was that the said Patta has remained in force till 15/06/2001 and, thereafter, they have to vacate the lands. However, they were immediately not given the possession of the lands simultaneously, while passing of the order at Annexure-A. Some of the petitioners were given possession of the lands on 29/11/1997 and others were given on 09/03/1998, as per the Kabja receipt produced at Annexure-B collectively. Since then, they were occupying and cultivating the said lands. The respondents authorities have tried to evict the petitioners from the lands on the ground that as per the order at Annexuer-A allotment of lands in their favour was upto 15/06/2001. The petitioners have filed this petition and prayed that they may be allowed to cultivate lands for actual period of five years from the date of receipt of the possession of the lands. It is further prayed that the respondents authorities may be directed to consider the claim of the petitioners for permanent allotment of the lands as per the various resolutions of the State Government.

#. Reply affidavit is filed in this matter by the respondent No.3, wherein it is contended that as per the allotment order at Annexure-A dated 04/03/1997, the petitioners were entitled to remain in possession and cultivate the same till 15/06/2001 and, thereafter, they have to vacate the lands. Mr.P.R.Abhichandani, learned AGP for the respondents submitted that all the petitioners accepted the possession of the lands in question on the terms and conditions mentioned in the allotment order at Annexure-A. One of the condition was that they have to vacate the land on 15/06/2001. Therefore, they have no right to continue on the land any more after 15/06/2001. This argument of Mr.Abhichandani, learned AGP cannot be accepted for the simple reason that the allotment of lands was for five years. It is true that the first condition is contrary to the allotment order itself. Therefore, that has to be ignored and the petitioners are entitled to remain in possession of the lands from the actual date of possession for a period of five years.

#. There is a force in the submission made by Mr.J.V.Japee, learned advocate for the petitioners that

when the petitioners had lost their valuable lands then the respondents authorities are bound to consider the claim for permanent allotment of the lands, allotted to them, as per the previous resolution of the State Government. For no fault of the petitioners, they cannot be made to suffer as the poor farmers have lost their valuable pieces of land, when it submerged in the Dharoi Dam Project. Therefore, they are entitled for this also.

#. In view of the above discussions, this petition is allowed. The respondents are directed to allow the petitioners to occupy and cultivate the land allotted to them for a period of five years from the actual date of possession i.e. 29/11/1997 and 09/03/1998 respectively. The respondents are further directed to consider the claim of the petitioners for permanent allotment of the lands to them, on "Ek Sali" [ ] basis as per the resolution of the State Government. The respondents to take decision as early as possible and not later then 31st December, 2002. Rule is made absolute. Direct service is permitted.

[B. J. SHETHNA,J.]

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